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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA-2011-0315; Notice No. 11-13]

Clarification and Further Guidance on the Fireworks Approvals Policy

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Clarification.

SUMMARY: This clarification provides further guidance on PHMSA's policy that it will only accept fireworks approvals applications from fireworks manufacturers or their designated agents and grant approvals only to manufacturers of fireworks devices. This clarification and additional guidance follows the issuance of Docket No. PHMSA-2010-0353; Notice 10-9, published on June 29, 2011.

DATES: The policy clarification discussed in this document is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366-4512, PHMSA, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document provides clarification and further guidance on PHMSA's Office of Hazardous Materials Safety (OHMS), Clarification of the Fireworks Approval Policy published on June 29, 2011 (76 FR 38053). Specifically, this document provides clarification and

additional guidance on how we intend to implement our policy with respect to: (1) EX classification approvals with expiration dates; (2) applications from non-manufacturers that seek to add new item names to existing EX classification approvals; and (3) applications from non-manufacturers that were denied prior to June 29, 2011.

In addition to addressing questions as to how we intend to implement our earlier policy clarification, this document clarifies our policy regarding the transfer of EX classification approvals.

II. Background:

The transportation of an explosive (fireworks device) requires an EX classification approval issued by PHMSA, commonly referred to as an EX number. The EX number is a unique identifier that indicates the device has been classed and approved for transportation in the U.S., and is specific to a particular device as specified in 49 CFR § 173.56(j) and the American Pyrotechnic Association (APA) Standard 87-1.

PHMSA understands that it is a common industry practice for fireworks devices produced by one manufacturer to be marketed and sold under different trade names. Further, in the past, each retailer, importer or distributor, in addition to the manufacturer, applied for and received an EX classification approval for the identical fireworks device. This practice resulted in PHMSA processing multiple applications and issuing multiple approvals for the same fireworks device. This redundant and burdensome process did not promote the safe transportation of explosives (fireworks devices); instead, it impeded the conduct of business for both the fireworks industry and PHMSA.

On June 29, 2011, we issued a clarification of our policy to issue fireworks classification approvals only to fireworks manufacturers, and accept fireworks classification applications only

from fireworks manufacturers or their U.S. designated agents. This policy clarification was intended to restate the requirements of the Hazardous Materials Regulations (HMR), enhance safety by ensuring accountability of manufacturing, and reducing the number of duplicate applications and EX classification approvals being issued for identical fireworks devices.

Since the policy clarification was issued, we have received questions about how we intend to implement it with respect to: (1) EX classification approvals with expiration dates; (2) applications from non-manufacturers that seek to add new item names to existing EX classification approvals; and (3) applications from non-manufacturers that were denied prior to June 29, 2011.

We have also received questions about our policy regarding the transfer of EX classification approvals, which was not addressed in the prior clarification notice.

To address these questions regarding our fireworks approvals policy, we are providing the following clarification and additional guidance.

III. EX Classification Approvals with Expiration Dates

After June 29, 2011, only a manufacturer that holds a valid EX classification approval may reapply to have the EX number renewed. Regardless of who originally applied for the approval, to renew the EX classification approval, the manufacturer or its designated agent must be the entity who submits an application for renewal and all supporting documentation to fireworks@dot.gov. The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87-1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3).

All EX approvals with expiration dates held by non-manufacturers will expire as follows: Fireworks EX approvals expiring January 1, 2012 through December 31, 2012 will expire two years from the date indicated in the approval. For example, a fireworks EX approval expiring on January 1, 2012 will be extended until January 1, 2014. A revised EX classification approval will be automatically sent to the approval holder on record with the new expiration date. After December 31, 2014, the manufacturer or its designated agent must submit the application for renewal and all supporting documentation to fireworks@dot.gov. The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87-1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3).

Fireworks EX classification approvals expiring January 1, 2013 through December 31, 2015 will expire on the date noted in the EX approval and will not be extended. The manufacturer or its designated agent must submit an application for renewal and all supporting documentation to fireworks@dot.gov. The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87-1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3). For example, a fireworks EX Approval expiring on March 22, 2014 will expire on March 22, 2014.

All fireworks EX approvals with expiration dates will expire by the end of 2015.

IV. Requests to Add Additional Item Names to Existing EX Classification Approvals

We often receive applications to add fireworks device item names to an existing EX classification approval. Only a manufacturer or its designated agent may submit a request after June 29, 2011 to add an additional item name to an existing EX approval.

If anyone other than the manufacturer or its designated agent holds an existing EX classification approval and it is desired to add additional items to that approval, then the manufacturer or its designated agent must submit the EX classification approval as a new application.

V. Firework Applications Denied Before June 29, 2011

Firework applications resubmitted after June 29, 2011 by any person, company or entity other than the manufacturer or its designated agent that were previously denied will not be accepted unless those applications are submitted by the manufacturer or its designated agent as the applicant. The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87-1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3).

VI. Non-transferability of EX Approvals

EX approvals are non-transferrable, and therefore, may not be sold or transferred. Accordingly, EX approvals cannot be acquired in connection with any sale of assets, sale of business, acquisition or merger. PHMSA may find a company in violation of the HMR should a manufacturer attempt to use an EX approval issued by PHMSA to another company for manufacturing of the device. The manufacturer or its designated agent must submit an application for a new approval. The manufacturer must sign and certify that the device for which the approval is requested conforms to the APA Standard 87-1, and the descriptions and technical information contained in the application are complete and accurate in accordance with § 173.56(j)(3). If approved, PHMSA will issue a new EX approval to the manufacturer specified in the application.

Summary

PHMSA's Office of Hazardous Materials Safety (OHMS), Approvals Office will continue to issue approvals only to fireworks manufacturers and accept applications only from manufacturers or their designated agents. Consistent with this policy, we will only reissue EX classification approvals with expiration dates that have been submitted by the manufacturer or its designated agent. If the manufacturer was not the original applicant, the manufacturer or its designated agent must submit the application as a new application. However, we will provide an extended expiration date of two years for EX classification approvals that expire through December 31, 2012.

Additionally, we will only accept applications that seek to add new item names to existing EX classification approvals from the manufacturer or its designated agent. If the manufacturer was not the original applicant, the application must be submitted by the manufacturer or its designated agent as a new application. Further, applications from non-manufacturers that were denied prior to June 29, 2011 must be resubmitted by the manufacturer.

Finally, EX approvals are non-transferable, and therefore may not be sold or transferred.

Issued in Washington, DC on December 30, 2011

Dr. Magdy El-Sibaie,
Associate Administrator for Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration

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